

App. F. IX-4

Previous References

1930..31.
(Law.)

File No. 157-3a.

Serial Nos. /

Later References

P (65)

General and Revenue Secretariat.

Serial Nos. Me

Part B for June 1931

SUBJECT.

Re. Criminal Appeal no. 143/28-29 on the file
of the Dist. Judge Bangalore
(Appellant- Sanyasa Rao.)

M. Radha Raju
Q 27-7-31

No. 12/29-38

265/29. Bangalore
10-7-1929

From

The Public Prosecutor,
Bangalore.

To

The Legal Remembrancer,
and Secretary to Government,
Law Department,
Bangalore

Sir,

Law
157

Re: Criminal Appeal No. 143/28-29 on the
file of the District Judge, Bangalore,
Appellant. (accused) Sanjeevarao.

I have the honour to state that on
my application presented to Court yesterday
in the above Appeal, orders were passed postponing
the appeal to 3-8-1929 for arguments on
both sides.

I have the honour to be,
Sir,
your most obedient servant

Submitted for perusal. Further
report will be awaited

B. N. V. Alva
Public Prosecutor,
Bangalore

Law
157

157

MP
15-7-29
157
Sas B
15-7

V S Sangeerna Rao to
Mr M C Marappa
(case under S. 353 I.P.C.)
the conviction passed
by the City Magistrate
Bangalore was upheld
but the sentence of
fine was reduced
to Rs 20 If desired
I will apply for
a copy of the judg-
ment after re-obje

ing of the Court the
judgment was pronounced on 8-10-29

I have the honour
to be Sir

Your most obedient Servant

B. N. Vijaya Deva

Public Prosecutor

Bangalore District

Subd for Punjab

2nd member)

D-11

ku

11/10

Law
12/10

11.10.29

11/10

ROUTINE NOTES.

[To be used only for notes, requisitions,

C78 Camp Mysore
11th October '29
From ~~the~~ Public
Prosecutor Bangalore Division
To
The Legal Remembrancer
& Secretary, Law Dept.
Camp Mysore.

Sir,
I have the honour
to report that in
the appeal of M. r.

Draft put up calling for copy
of the order passed in the appeal-

MP
13/10

J. S. M.
D. B. 10/10

N. B. - Should routine notes be written on small slips.
the notes must be copied, or slips pasted on
this form.

To, The Public
Bangalore
P 2071 of 15.10.29
requesting him to send
a copy of the order.

Enc. A.
MP
17.10

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

1873
Letter no: 162 dated 2/12/1029
from the P.P. Bangalore
requesting to send Rs 5/-
for copying expenses necessary
for obtaining a copy of the
order

Secy's orders

"maybe sent"

S.D.P.M.

23/10/

This maybe sent to the
Office Branch for necessary
action

Doc

to the Supt. Office P.P.
into Camp

need reply
29/10

25/10/29

26/10

The money will be
out if a letter forwarding it
is sent by the P.P. to the
will be treated as an advance
pending receipt of Rs 5/- from
the P.P. Public Protector.

A

27/10

The letter P.P. to the Supt. Office P.P.
into Camp

Law 29/10

N. B.—Should routine notes be written on small slips
the notes must be copied, or slips pasted on
this form.

1873

2029

266
24

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

as at A
Dof pub up

MP
29.10.29
for
29/10

Jesse
24
20/10

Letter no. 175 of 30/10/29 from
the P.P.C., Bangalore requesting
payment of Rs 6.1-0 for copying
charges -

Lo R.'s order "do do" 20 PM.
1.11

May the draft & fair already ^{ready for} ~~ready for~~
~~be issued~~, be changed accordingly

MP
1.11.29
for
4/11

yes
24
4.11

24/11

to, the Public Prosecutor

P 2376/ S. 11.29

amount Rs 6.1.0 for

copies -

Sust A

MP

11.11.29

N. R.—Should routine notes be written on small slips
the notes must be copied, or slips pasted on
this form.

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Letter No 194/29-30 dated 17/11/29

from P.P. Bangalore forwarding

Copy of Judgment in ^{Mr. Sanyal's}

Criminal appeal before the

Sessions Judge

Submitted for perusal

D.P.
20.11.29
P.P.

L.R.)

20/11

In this case owing to some mistake,
the P.P. & P.P. had not at all appeared
the Sessions judge had heard the arguments of my
one side & closed the case for judgment, and the
P.P. & P.P. expressed the opinion that the judge
would not re-open the case.

But I had to point out the previous ^{& policy} ^(ad to P.P.)
to be actually directed the petition to be presented
to the Court on the presentation of which the judge
would re-open the case and
re-hear the arguments on both sides. This
is referred to in para 2 of the judgment.

The Sessions judge has in para 11 of the judgment (p. 17) ^(p. 17)
stated that the trial magistrate (Mr. Narayan Samy
Narayan) was not at all justified in having done so ^{in violation}
the observations of the Chief Justice against the A.S.P. (Mr.
Munappa) in the case & that the action of the
Magistrate was illegal.

N. B. — Should routine notes be written on small slips,
the notes must be copied, or slips pasted on
this form.

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

III

Again, the judge has pointed out -

- p. 21
(Flag 2)
- p. 26
(Flag H)
- p. 27
(Flag N)
- p. 33
(Flag O)
- p. 37
(Flag P)
- 1) That the A.S.D. was on duty & in charge of the arrangements at the Sultanpur School;
 - 2) That the Educational officers had requested the Police to see that ticket holders only were admitted
 - 3) That it was not a public function & that the accused (Mr. Sanjiva Rao) contended that he had a right to attend it was untenable
 - 4) That the authorities quoted by the appellants advocates (Mr. Raju) were inapplicable
 - 5) and that the accused is guilty of an offence under S. 353 I.P.C.

IV Lastly, the Sessions judge has clearly condemned the inconsistent & unintelligible reasoning of Mr. Narayanasamy Naik who says in his post "this nothing was proved against the accused", as also his bungling about the application of S. 562 of the

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Cr. P. Code to the case in question.

A perusal of this portion of the post proves that Mr. Narayanasamy Naik has not got a clear head to grasp the simple questions of law which ordinarily are

p. 38-41
(Flag Q)

319 Law 151

R.S. TM-31

ROUTINE NOTES.

To be used only for notes, requisitions, etc., not intended for permanent record.

arise before courts of law
in civil & criminal cases.

A. pursuant to the above points further shown
that the newspaper articles published in the
newspapers about the profit so high
misleading & incorrect.

DEWAN'S OFFICE
4 DEC. 1929
No. 2154

P. M.
26/10

3rd member
2 - members
Dewan

27.10.29
P. M.

the Sessions Judge's conclusions
are correct.

Mr. TSD
Please file this
a file no +
recom B

CSB
2/12

20/6/31

P. M.
4-12-29

P. M.
2/11/29
4/12

P. M.
6/12

and in the Court to
satisfy that this acc
was really a fresh offense.
The acc himself did not
invoke the act of 5-582, and
it was not possible for the
prosecution to caution

where ~~the~~ is the
1st of the Section 582

Routine Notes.

~~is~~ used only for notes, requisitions, etc., not intended for permanent record.]

In this case the accused
has been left off into an
administration under the
522 (1A) 7 the Tr. P.
code. This section is
applicable only in cases
where no previous conviction
is proved against the
offender. But when the
chief court deals with the
case under this section
they were fully aware that
there was a previous conviction
against the accused.

I should like to have a note
on this aspect of the case by
29.1.30

Lawless
with sample

A B — Should routine notes be written on small slips,
the notes must be copied, or slips pasted on
this form.

Office of the Superintendent of Police
Bangalore City and Taluk.

Dated, Bangalore, the 9th July 1929.

Dear Sir,

I enclose herewith a copy of the petition presented by the Public Prosecutor this day before the Sessions Judge, Bangalore in Criminal Appeal - No.146 of 28-29, for favour of your information. The case is posted for ~~order~~ to 3rd August 1929.

Yours sincerely,

An - (Annoyed)

P. Mahadevayya, Esq., B.A., B.L.,

Secretary to Government,

Law Department, BANGALORE.

I sent for the Public Prosecutor & instructed him to present an application to the Sessions Judge in Sangina Ravi case to ask for an opportunity. He hesitated to state that the judge may not appear in the case. But I insisted upon his appearance & assured him that the judge will hear him after giving notice to opposite side. The case is accordingly posted to 3rd August for judgment.

107-9
member

IN THE COURT OF SESSIONS JUDGE, BANGALORE.

Cr.Appcal No.146 of 23-29.

Appellant.

Respondent.

V.S. Sanjeeva Rao.

Government of Mysore.

Application filed by the Respondent.

1. The Respondent learns that the above Appeal was heard ex-parte on 4-7-1929 and that orders are reserved.
2. In this appeal the notice that was sent to the District Magistrate was by mistake not sent to the Public Prosecutor with the result that he could not appear to support the conviction of the lower Court.
3. This is an important case. The undersigned has been instructed by the District Magistrate to pray for an opportunity in the interests of justice for arguments being heard in support of the judgement Lower Court. Notice may also issue to the Appellant's Counsel.
4. The undersigned therefore prays that this Hon'ble Court may be pleased to grant him an opportunity of being heard in the case before judgement is passed.

Bangalore,

Sd. B.N.Vijayadevra,

9th July 1929.

Public Prosecutor.

5911 p 830
M. RAMACHANDRA RAO, Esq., B.A., B.L.,
Government Advocate.

3
157-30
GOVERNMENT ADVOCATE'S CHAMBERS,

PUBLIC OFFICES,

D.O. No. 553

Bangalore, 16th January, 1930

DEWANA'S OFFICE.

23 JAN. 1930

No. 31691

RD-16
Dear Sir,

In continuation of my D.O. letter No. 47 dated the 11th January 1930, I am forwarding herewith for the information of Government, copies of the Orders passed by the Chief Court in Criminal Revision - Petitions Nos. 135 of 1929-30 and 279 of 1928-29, on their file (V. S. Sanjeeva Rao - Petitioner).

Yours sincerely,

Copies of final orders of Chief Court
in 2 cases are subd for perusal.
M. Ramachandra Rao

In the 1st case the conviction & sentence against Mr. S. Rao are fully confirmed.

In the 2nd case, the conviction is confirmed but the accused is let off with an admonition under S. 562.
Kind ref to is invited to the position of the order marked in the file.

3rd Member

Dewan
P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government,
Law Department, BANGALORE.

P. M.
21/1/30

M.
22-1-30

by
21/1/30
P. M.

4

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday the 2nd day of January 1930.

PRESENT

RAJAHARIPATIYAJA

MR. JUSTICE C. S. DORASWAMI IYER,
CHIEF JUDGE,

and

MR. JUSTICE G. SRINIVASA IYER.

CRIMINAL REVISION PETITION NO.279 OF 28-29.

V. G. Sanjeeva Rao .. Accused .. PETITIONER

(By Mr. B. Venkatapathaiya)

-Vs.-

Government of Mysore .. Complainant .. OPPONENT

(By Mr. N. Ramachandra Rao, Government Advocate)

Criminal Revision Petition against the conviction and sentence passed by the City Magistrate of Bangalore in Criminal Case No.201 of 1928-29.

This criminal revision petition coming on for hearing on Monday the 4th day of November 1929, the Court pronounced the following :-

O R D E R.

The facts found in this case are that on 16-10-28 when the Bangalore Disturbances Enquiry Committee was in session in the Daly Memorial Hall,

the

the petitioner, who was invited to be present at the enquiry as the representative of the Press, tried to force his way in through the 'way out' gate, and that when the constable on duty called upon him to get in through the 'way in' gate, the latter insulted the former by calling him Thayee genda. The petitioner was charged and convicted of having committed an offence under Section 504 Indian Penal Code, and sentenced to pay a fine of .25/- and in default to undergo simple imprisonment for a week. He was also charged under Section 353 Indian Penal Code of assaulting or using criminal force to a public servant in the discharge of his duty, as such public servant. The Magistrate, however, acquitted him of the said offence on the ground that the rule of the gate was not strictly observed, and that there was not sufficient evidence as to whether any instructions in regard to the observance of the rule were given, or if given by whom and under what authority such instructions were given. In such circumstances the Magistrate was of the opinion that the Police constable on duty was not strictly within his rights, or acting in the discharge of his duty, in preventing the accused from entering the premises through the 'way out' gate.

It was argued on behalf of the petitioner, that on the facts found the offence of criminal insult was not made out. To constitute such an offence it has to be proved that the accused intentionally insulted and thereby gave provocation,

intending

intending or knowing it to be likely that the provocation given would cause the complainant to break the peace, or commit any other offence.

The question is whether in the present case the petitioner by the use of the expression 'Thayi-genda' when he was unauthorisedly prevented from getting in, intentionally insulted the Police Constable on duty, knowing at the same time that the provocation given was likely to cause the latter to break the peace or commit any other offence.

That the expression 'Thayi genda' amounts to a vulgar abuse does not admit of any doubt. The only question is whether the use of the expression coupled with the attendant circumstances in this case constitutes the offence of criminal insult, having regard to the various decisions bearing on this matter. In 25 Mysore Chief Court Reports 241 the Judges were inclined to the view that the word 'Bole maga' used by the accused though vulgarly abusive, was more in the nature of an angry ~~XXXXX~~ retort to the complainant, and was not deliberately intended to be provocative.

In 26 Mysore Chief Court Reports 232, it was observed that Section 504 would not be applicable unless it was clearly shown that the language used was such, and was used in such circumstances as would be likely to provoke a breach of the peace.

To the same effect are the cases reported in 28 Mysore Chief Court Reports 118, 4 Mysore Law Journal 223, and 5 Mysore Law Journal 202.

The provocation given by the use of the insulting language need not, however, actually result in a breach of the peace, or the commission of an offence. It is enough if from the surrounding circumstances it can be reasonably inferred that the offender intended or knew that the provocation given by him was such as would likely ^{result} ~~insult~~ in a breach of the peace, or the commission of an offence. See 1 Weir pages 621 and 622, I.L.R. 10 Madras 353, 81 I.C. 903 (Nag.), 28 Criminal Law Journal 172 (Lahore). *TP* Turning now to the facts of the present case, it is found that the petitioner not only used the abusive language, but actually pushed the door open in trying to get into the premises, in spite of the complainant's protest. It may be that the latter act did not amount to an offence under Section 352 or 353, but if such an act accompanied, as it did in the present case, the vulgar abuse of a public servant on duty in the presence of others, it cannot be said that the Magistrate was wrong in inferring that the petitioner must have known that the provocation given by him was such as to bring his act within the scope of Section 504.

We must therefore decline to interfere.

Sd/- B. S. Desaiwani Iyer

CHIEF JUDGE.

Sd/- G. Srinivasa Iyer
Cpy JUDGE.

Munasinga

Dy. Registrar

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday the 2nd day of January 1930.

BEFORE

RAJADHARMAPRAVINA

MR. JUSTICE C. S. DORASWAMI IYER, CHIEF JUDGE

CRIMINAL REVISION PETITION NO.135 OF 29-30

presented by Mr. L. S. Raju, Advocate for the Petitioner V. S. Sanjiva Rao (Accused) praying that the decision of the Sessions Judge of Bangalore Division in Criminal Appeal No.146 of 1928-29 confirming the conviction but reducing the sentence passed by the City Magistrate of Bangalore in Criminal Cases Nos. 149 and 180 of 1928-29, may be revised.

This criminal revision petition coming on for admission on Wednesday the 11th day of December 1929 and after hearing the arguments of the aforesaid - advocate for the petitioner, the Court pronounced the following :-

O R D E R.

The petitioner, a journalist, was convicted by the City Magistrate, Bangalore, of an offence - under Section 353 Indian Penal Code, and this conviction was upheld in appeal by the Sessions Court of the Bangalore Division. Both the courts concur in the finding that the petitioner slightly pushed and thus criminally assaulted the Assistant -

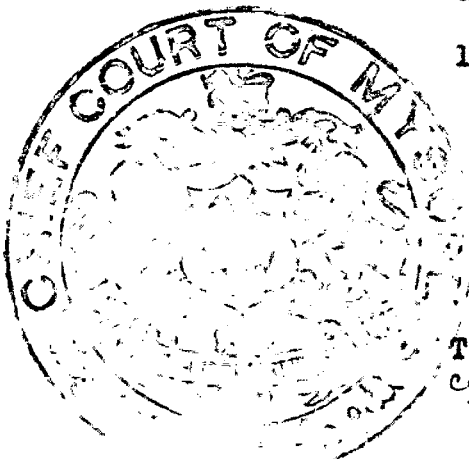
Superintendent

Superintendent of Police Prosecution Witness No.11, when the latter, in the discharge of his duties as a public servant, attempted to prevent the petitioner from entering the compound of the Sultanpet Middle School without a ticket of admission on the occasion of the celebration of the Ganesha day in the school on the 17th September 1928.

It would seem that in view of the disturbed state of public feeling in Bangalore at the time, the Magisterial and Educational authorities, and the organisers of the celebration had decided to regulate admission into the school compound by means of tickets, and that the Police were requisitioned to see to the preservation of order, and the restitution of admission only to ticket holders. Accordingly the Assistant Superintendent of Police was, among others, on duty on the occasion, regulating admission into the school premises in the interests of peace and order. The petitioner attempted to enter the school compound without a ticket of admission, and in this he was obstructed by the Assistant Superintendent of Police. It appears to me that in doing the work of regulating admission into a Government School, in the circumstances of the case, the Assistant Superintendent of Police was acting in the execution of his duty as a public servant. On the question of fact as to the use of criminal force, I am not prepared to interfere with the concurrent findings of the lower courts. The conviction will therefore stand.

As regards the sentence the City Magistrate was inclined to deal with the petitioner under - Section 562, (evidently 562(1-A) Criminal Procedure Code, in consideration of his age and the fact that nothing is proved against his character, but - refrained from doing so, on a mistaken view that he could not do so, as he would be 'pronouncing judgment in another case soon' in another case pending against the petitioner. The learned Sessions - Judge, while pointing out the error of the City Magistrate in this respect expressed the opinion that the offence was one falling within the purview of Section 562 (1-A) which permits the accused being released after due admonition.

I agree in the view that the offence was trivial in its nature and incidence committed, as it appears to have been under the influence of a strong feeling of personal insult, and arbitrary exclusion, from what he conceived to be public - function. This and other extenuating circumstances set out in the judgments of the courts below afford, in my opinion, sufficient grounds for the application of the new Section 562 (1-A) recently enacted, and I would accordingly direct that the petitioner be let off with an admonition that he should be law-abiding and peaceful in future. The fine, if levied, should be refunded to him.



TKV/8.

cu

Sd/- C. S. Desabwami Jy

CHIEF JUDGE.

Sd/- G. Srinivasa Jy
Copy " Judge

M. Srinivasan
Dy. Registrar

TWO ANNAS



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In the Court of the ~~Senior~~ ^{Session} Judge Bangalore

Bangalore, dated 8th October 1929.

Present. A. Greenivasaragharacharya, Esq. ^{Session}

P. N. B. L. ~~Justice~~ Judge.

Criminal Appeal No. 146 of 1928-29.

Appellant - accused. V. S. Sanjeiva Rao.

Respondent - Government of Mysore.

Petition of Criminal appeal presented
by Mr. L. S. Raju Advocate for the Appellant
against the Conviction and sentence of the
City Magistrate Bangalore in C. C. No. 149
and 180 of 1928-29 ^{under} section 353 P.P.C.
on 26. 10. 29.

Criminal Appeal No. 146 of 1928-29.

Judgment

1. This is an appeal against the conviction and
sentence passed on the appellant by the City
the City Magistrate Bangalore in C. C. No.



7"
1828
22-10-29

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TWO ANNAS



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Nos 149 and 180 of 1928-29 for an offence under section 353 I.P.C. (assault on criminal force to deter public servant from discharge of his duty). The Appellant has been sentenced to pay a fine of Rs 400/- and in default of payment of the fine to undergo rigorous imprisonment for a period of three months. A charge sheet under section 353, 186 and 188 I.P.C. was placed against the appellant by the "B" Division Inspector Bangalore City and this was numbered as C.C. No. 149 of 1928-29 in the Magistrate's file. In addition to this the Assistant Superintendent of Police Bangalore City P. No. 1 Mr M. C. Maniappa presents a complaint to the same Magistrate under section



20

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TWO ANNAS



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186 and 188 J. P. C. with a view to satisfy the requirements of section 195 (1) (a) Criminal Procedure Code. This Complaint has been registered as C. C. No. 180 of 28-29 and the magistrate after examining the complainant on oath directed summons to issue to the accused for offences under section 186 and 188 J. P. C. Both the cases virtually related to one and the same transaction and have been tried together. The charge against the accused as stated in Column 7 of the charge sheet is to the following effect "that at about 9.45 H. M. on 17-9-1928 while P.W.s 1 and 2 (Messrs M. C. Mariappa and H. V. Subbanna) were on duty near the Subbanna



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middle school the accused disobeyed the directions given by them (Pw01 and 2) and assaulted Pw01 while he was in the lawful discharge of his duties and obstructed them in the discharge of their duties. Hence the charge "

Seven witnesses were cited in the charge sheet of whom the Prosecution have examined none - Special Reserve P. C. no 116 mainly not having been examined. The accused originally cited thirty witnesses but actually examined twelve. He disputed with the evidence of Mr. S. Hirvanniah Inspector General of Police on the ground of his being hostile.

2. The Magistrate held that no offences were committed by the accused under section 156 and 188 of P. C. The accused



Up

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TWO ANNAS



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was charged only under section 353
D.P.C., convicted of it and sentenced
as aforesaid. I have perused the
evidence and records also considered
the arguments advanced by appellants'
advocate and by the public prosecutor
on behalf of the respondent when this
appeal came on for hearing in the
first instance the respondent was
unrepresented. The arguments addressed
on behalf of the appellant were heard
and the appeal was posted for judgment.
Subsequently however the Public Prosecutor pre-
sented an application for re-opening the pro-
ceedings in the appeal and hearing his arguments.
This application was granted, the appeal
was re-heard and argued at length by
counsel on both sides.



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TWO ANNAS



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3. The facts of the case according to the prosecution are set forth ~~in~~ ⁱⁿ para 2 of the judgment of the lower court. Although several grounds have been set forth in detail in the memorandum of appeal they resolved themselves into four main questions for consideration namely (1) whether the accused assaulted or used criminal force to Pw, a public servant (2) whether when the accused assaulted or used criminal force to Pw, the latter was acting in the execution of his duty as such public servant (3) whether such assault or criminal force was committed (a) with intent to prevent or deter Pw, from discharging his duty as such public servant or (b) in consequence of something done

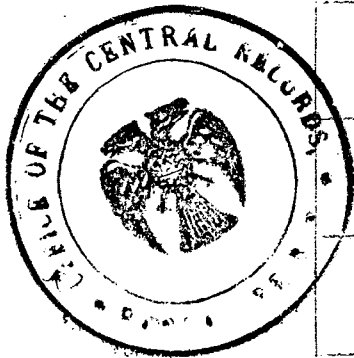


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or attempted to be done by Pw 1
in the lawful discharge of his duty
as such public servant and lastly
(4) whether the sentence is too severe
I shall proceed to deal with these
questions one by one and in their order.

4. The first question to be considered
is whether the accused assaulted or
used criminal force to Pw 1. There can
be no difference of opinion as regards
Pw 1 being a public servant. According
to the evidence of Pw 1 the accused was
inside the school gate and when asked
by Pw 1 whether he had an invitation
card, the accused replied that he would
go where he liked, turned his back
on Pw 1 and attempted to go further
while. Thereupon Pw 1 went round



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TWO ANNAS



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8

him and standing opposite him barred
his further progress. Then the accused
is said to have pushed him.
After that P.W. 1 caught hold of the
accused and led him to the gate and
asked him to go. P.W. 1 in cross-examination
says that the force used on him by
the accused was violent and that
P.W. 1 was strong enough not to fall
down. On the other hand the evidence of
other P.W.s shows that the push must
have been a very trivial one. P.W. 3 Greeni-
-vasa Rao says "The accused proceeded
forward pushing P.W. 1 aside. When
P.W. 1 took him out" Again in answer to
a question put by the Court he says "The
accused placed his hand on the abdomen
of Mr. Marayappa and pushed him. It ~~was~~^{was}"



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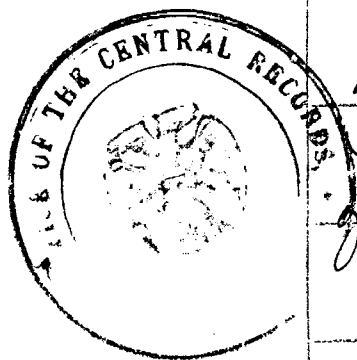
TWO ANNAS



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was a push to make way - It was not a violent push". P. 4 says "The accused pushed aside P. 1 and was going in

5. The evidence of P. 6 shows that accused pushed back P. 1 saying that P. 1 had no business to meddle with him and that he would not go out. W. 6 Mr. Sankaranam Duraiyar states "The accused did not certainly push Mr. Marayappa" but earlier in his evidence he says "The accused was arguing with him for a few minutes. Mr. Marayappa would not yield. The accused again attempted to get into the compound". The material portions of the evidence of Mr. Shankaranarayana Rao W. 12 who was cited by the accused himself as one of his witnesses are given below.



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TWO ANNAS



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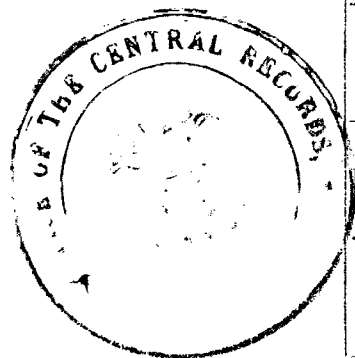
the accused wanted to get in Mr. Maniyappa prevented him from getting in and said that as he had no invitation and he could not admit him and he had strict orders there was a tussle between them "

" Question by Court :- please explain the word tussle.

Answer - As the accused tried to force his way in Mr. Maniyappa pulled him back. "

Further question by Court :- You said that Mr. Sampina Rao was forcing his way in - Could it be by pushing Mr. Maniyappa.

Answer - It was not by mere words that this took place - Mr. Maniyappa wanted to prevent the accused either standing in front of him or placing his hand across him. there



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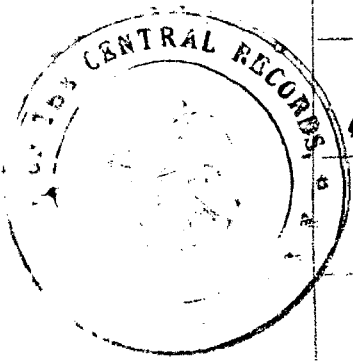
was physical obstruction to the accused".

b. Later on the witness⁸⁸⁹ says that he was within a couple of y and 6 of the place of incident and that he could see everything. "the accused pushed in. I cannot say whether he pushed in by removing the hand of Mr. Marigappa. The accused tried to overcome the obstruction". The Court thereupon put a specific question to the witness thus

Question :- Did you see the accused ^{not. m} pushing Marigappa by the chest or abdomen.

Answer :- I am not in a position to say

to the best of my recollection it ^{involved} ~~would~~ a little pushing in his attempt to get in, getting rid of the obstruction. I cannot say whether it was the pushing of the arm



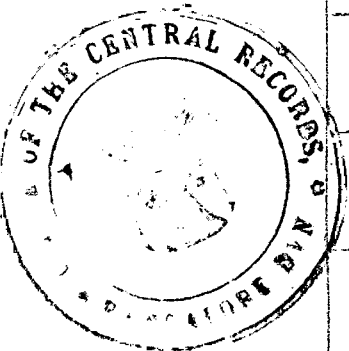
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on chest or any other portion of
the body

7. the evidence of Mr. Shankaranarayana
shows that though the accused
might have pushed Pae, the
push must have been so slight
and trivial as not to attract
more than a mere passing attention.

The very expression "involved a little
pushing" used by the witness implies that
the push could not have been "Violent"
as characterised by Pae. If the push
had been a violent one surely Wae_{1,2} would
have observed it and said so. The fact that
Wae_{1,2} cannot say in what portion of the body
Pae was pushed also shows that the push
must have been very slight. This will also
explain why Wae_{1,2} did not notice it at all



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when Pw 12 who was quite close
could not observe what part of
the body of Pw 1 was pushed, it is
quite possible that Pw 6 did not
observe the push at all.

8. That the push must have been very
sudden is also supported by the action of
the Inspector General of Police. The altercation
between Pw 1 and accused was reported
to that officer and he is said to have come
out. Both Pw 1 and Pw 6 say that
they explained the situation to the Inspector
General of Police and in spite of it
the latter thought it fit to interfere
and take the accused inside the building
without even the formality of
providing him with an ^{an} invitation ~~under taken~~



He ticked at that late stage as was

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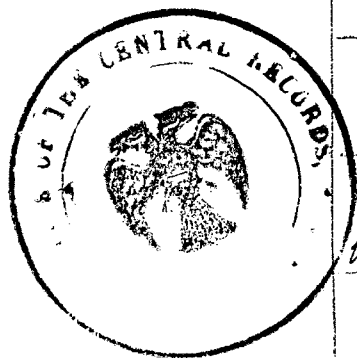
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~~done~~ in the Case of certain other
 Journalists by P.W. 1, it shows that the
 incident which happened between accused
 and P.W. 1 must have been a trivial one.
 It can scarcely be expected that the
 Inspector General of Police would have
 intervened in favour of the accused and
 taken him aside if the accused had
 been guilty of a violent push given
 to P.W. 1. On the other hand the pro-
 -habilities are that the I. G. P. himself
 would have issued immediate orders
 to eject the offender from the school.
 9. Again it is clear from the evidence
 that ^{has been} ~~had~~ been adduced on both sides,
 that the rule that admission was to
 be restricted only to ticket holders
 was not very strictly observed. In



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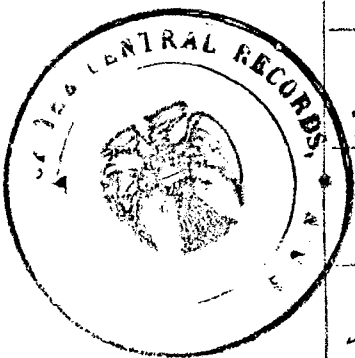
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In the case of some persons like w_1 and w_2 they were taken inside according to the witnesses by P_1 under the orders of the Superintendent of Police - and ~~the~~sm tickets provided for them at the eleventh hour. In the case of Mr. Obeidulla was even tho he later^{was sm} fatality ~~has~~^{has} not observed and he was allowed to enter. he is a retired Superintendent of the central jail even though he had no invitation card. It goes without saying that a rule if it is to Command the respect of the public must be strictly and impartially enforced. There should be no exceptions except what have been provided ^{for in sm} from the rule itself. Even the taking in of the accused inside without a ticket strictly viewed,



Yes

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is an infirmement of the rule.

10. All there are extenuating circum-
stances mitigating the gravity of the
offence of the accused. When the accused
saw people in no better position than
himself admitted without difficulty ^{on} Even
though they had not been issued in-
vitation tickets yet admittance
was ^{his} ^{on} denied to him though must have been
more about the personal misunderstanding
with ^{on} he had ^{on} and less about the rule
prohibiting admission to ^{every} ^{on} one except
ticket-holders. It is probable that if the
rule regarding admission had been strictly
and impartially enforced in the case of
every ^{on} ~~any~~ body, accused would not have ventured
even to argue with ^{on} ~~the~~ much
less to indulge in "wordy warfare"



He

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is characterised by one of the defence witnesses. Partiality on the part of a public servant, particularly in a police officer creates a sense of injury and provokes hostility on the part of the person or persons adversely affected.

11. The trial Magistrate in this case

has somewhat loosely permitted to

be put in as evidence certain obser-

-vations of the Chief Court regarding

the, found on page 73, Vol 31 of the

Mysore Chief Court reports. The ob-

-servations are quoted in para 15 of

the lower Court's judgment. In my opinion

these observations are not relevant for

the purposes of this case. They are not

evidence under any of the Sections of the



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Evidence Act. The credit of a witness can be impeached by any of the modes set forth in section 155 of the Evidence Act. The passage referred to by the Magistrate does not come under section 155. Judgments considered as judicial opinions are only relevant under section 40-42 of the Evidence Act. In the present case the observations cannot be treated as opinion evidence since they do not come under section 45 to 51 of the Evidence Act. I think the Magistrate should not have permitted these observations going in as evidence for the purposes of this case. It may be added that the existence of the judgment is not a matter in issue in this case.



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12. The other questions to be considered are whether when the accused used criminal force or assaulted the A. S. P. No. 1 the latter was acting in the execution of his duty as such public servant and whether such assault was committed with intent to prevent or deter P. No. 1 from discharging his duty as such public servant or in consequence of something done ^{or done} ~~and~~ attempted to be done by him in the lawful discharge of his duty as such public servant. P. No. 1 is an Assistant Superintendent of Police and is one of the Police officers referred to in Section 4 (a) of the Mysore Police Regulation of 1908. Section 29 of the said Regulation runs as follows "Every Police officer shall for all purposes



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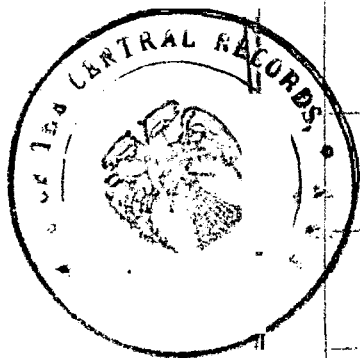
TWO ANNAS



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of this Regulation he deemed to be
always on duty and may at any
time be transferred to or employed
on police duty in any part of
Mysore for so long as his services may
be there required". P. W. 1 appears
to have been drafted to Bangalore
city on special duty but on the ^{day} ~~date~~
in question his services were at the
disposal of the District Superintendent
of Police Bangalore city and Taluk. The
letter had on 15-9-28 about ^{two} ~~ten~~ days
prior to the occurrence issued an
order to P. W. 1 Exhibit P₁ which runs
as follows: "Assistant Superintendent
of Police Mr M. C. Mariappa will in addition
to his own duties be in charge of the picket
and patrolling and other arrangements



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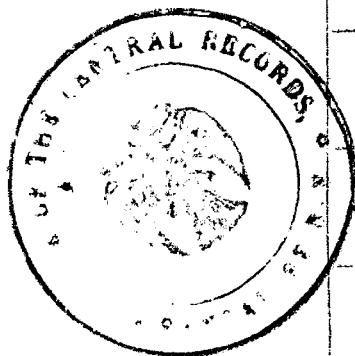
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in the Sultanpet - school area
and Kengeri gate police station
limits from the 17th instant until
the Ganeshha celebrations are over".

On the day in question therefore I
was not at the school merely as
a spectator but was in charge of
the arrangements.

13. The earliest communication
with respect to the celebration
is exhibit P 11 which is a Confidential
letter dated 10-9-1928 from the Director
of Public Instruction to the Deputy
Director. The material portion of it is
to the following effect. "to the State-
students
ment seems to have issued a notice
which suggests an invitation to all
students
and adults - to join them at



See

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the school in the celebration, I am
 writing ^{on}
~~visiting~~ to request that you will
 kindly take every ^{case} ~~care~~ ^{limit} ~~to~~ ^{on}
 the participation in the celebration
 to the ^{students} ~~students~~ and staff of the
 Sultanpet middle school. The head
 master of the Institution should therefore
 be definitely instructed not to allow
 into the premises of the school during
 the celebration days other than those
 that belong to the school or grown
 up persons who might ~~come~~ ^{desire}
 to join in the celebration. In order
 to ensure that only the pupils of the
 school and the staff took part in the
 function, the Deputy Director was requested
 to provide them with printed tickets
 so that the police on duty at the school



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may allow only holders of tickets into the premises the Superintendent of Police Bangalore City had to be informed of the strength of the School and its staff also of the number of tickets issued, a sample ticket also being sent to him. The Deputy Director in turn issued instructions to the District Educational Officer (Ext. 87) and in para 1 of his letter definitely stated that the Pujari in the School should be confined only to the boys of the Pullanpet Middle School. The District Educational Officer thereupon sent Ex. 88 to the Head master of the School and repeated the suggestions contained in para 7 of Exhibit 87 for the formation of ^{SR} a Committee consisting



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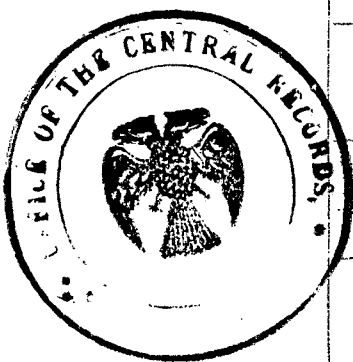
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of all the masters of the School
with one representative from
each section of the ^{or} School ^{Several}
~~classes~~ ^{or} of the School. to - concert all
measures in detail for the conduct
of the ~~group~~ subsequently the right
to participate in the celebration was
extended to the students of the Mamoolpet
middle school. (Vide exp 10)

On 16-9-1928 a preliminary meeting
was held under the Presidency of Mr
H. Shankar Narayana Rao (W. No. 12)
and certain resolutions were carried.

Resolution no. 6 delegated the settling of the
details of the function to a Committee
consisting among others of P. W. 5 & P. W. 8
^{or} ~~and~~ W. No. 8, W. No. 10 and others and resolution
No. 8 ^{or} ~~and~~ authorized the said



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Committee to deal with all questions relating to invitations and preparations connected with the celebration. ^{mean} - while on 13-9-28 the District Magistrate had issued a notice under section 36 (u) and 40 of the Mysore Police Regulation (Exhibit P. 20) paragraph 1 of which ^{runs} ~~is~~ as follows In view of the conditions prevailing in the Bangalore City at present, the celebrations in connection with the Ganapati festival in all the educational institutions in the City will be confined to the teachers and pupils of the institutions concerned and only such persons as hold tickets issued by the heads of the institutions will be allowed to enter the premises and participate in the celebrations



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15. The last letter on the subject is Exhibit P₂ dated 16-9-²⁸~~29~~ from the District Education Officer to the Superintendent of Police in Bangalore City. In para. of this letter it is distinctly stated that admission into the Gulbarga Middle School compounded with the means of tickets and the Superintendent is requested to see that only ticket holders ^{are} let in. In addition to these tickets 32 invitation cards were issued to certain officers of the State (vide para 2 of Ex P₂) and 50 admission tickets were also sent to the Superintendent of Police to be distributed in his discretion to Press reporters and others. The Superintendent apparently did not wish to take up this responsibility.



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and all these tickets were returned
in person. to Mr. Girdhara Murthy
the H. E. O.

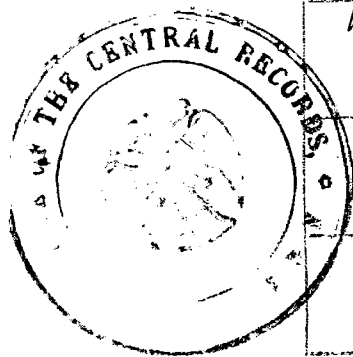
16. The several communications
referred to above leave no doubt
that from the very beginning the
Educational Authorities and the Committee
formed to see to the arrangements
in connection with the celebration
had no idea of making the function
a public one, in the ^{sense} ~~school~~ that any
member of the public who wished to do
so might participate in it. The
accused's argument that it was a public
function which he in his capacity as a repre-
sentative of the Press had a right to attend
is therefore untenable. It was open to
the organisers to restrict admission only



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17. In the beginning the ^{Students 800} ~~statements~~ by themselves
had formed a Committee under the Presidency
of ^{him 800} ~~Dr. W. H. 11~~ and had collected about Rs 120 for
celebrating the ² ~~the~~ Puja. They got invitation
Cards similar to - text 10, printed. That was 11



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in cross-examination admits that
the Students Committee was
superseded by another Committee
of which were 12 Mr. Shankara
Narayana Rao was the President—
the second Committee was formed
at the suggestion of Mr. Pand
Srinannappa ^{deputy} ~~by~~ ^{for} Director of Public
Instruction ^{for} ~~Disstitution~~ (vide evidence of one &) and
after its formation the Students Committee
apparently ceased to function It is
the second Committee that requested
the aid of the Police to preserve order and
see that admission was restricted only
to ticket holders



18. It is argued that the notification
issued by the District Magistrate exhibits
is ultra vires and not in proper conformity

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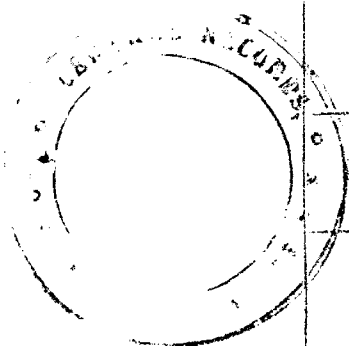
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with the Mysore Police Regulation
Exhibit 3 purports to be issued under
section 36 (u) and u of that Regu-
lation. Though it is doubtful
if the former section will apply since
there is not much evidence to show
that the rule was published in the
manner prescribed by section 36 Pub
Section (2) it can be brought under
section 40. Section 40 it may be added
does not prescribe any form of
order taking possession of any building
or publication of the name. Para 4 of
Exhibit P 3 is tantamount to taking pos-
session of the building.

19. Apart from this even assuming
Exhibit P 3 is altogether ultra vires, yet
there is the request of the Committee



W

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for the help of the police to preserve
 order and restrict admission to
 only certain specified persons. This
 would be sufficient to give juris-
 -diction to the police to act
 and it cannot be said that
 they were acting as private persons
 and not as public servants in the dis-
 charge of their duty. In a very recent
 case decided by the Prigab High Court
 Comperor vs Giam Singh A.I.R. 1928
 Lahore 230 where ^{an} ~~such~~ a Police officer was
 deputed in a private place to control
 the traffic on the road leading from the
 private place (Beterhaff) to the
 public Road was assaulted while dis-
 -charging his duty, it was held that the
 Police officer was acting in the lawful



The

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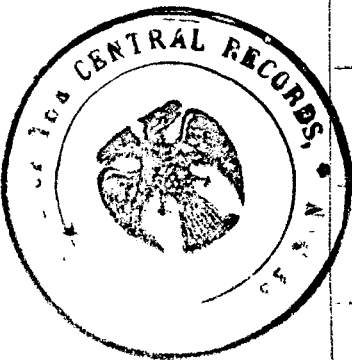


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discharge of his duty and the
accused was guilty of an offence
under section 353 I.P.C. The facts
in that case are very similar
to the one under appeal. (Vide also
8 Indian Cases 881) The appellants
pleader relies on the following cases
18. All 246, 28 Cal 411, 27 Madras
32, 27 All 481, and 20. I.C. 992
In the last mentioned case Asa and
another vs Emperor (20. I.C. 992)
it was held that the words "duty
as such public servant" in section
353 I.P.C. ^{meant 881} duty imposed by law on
such public servant and do not include
acts done in good faith under colour
of his office by such public servant.

Yes In that case a revenue peon was



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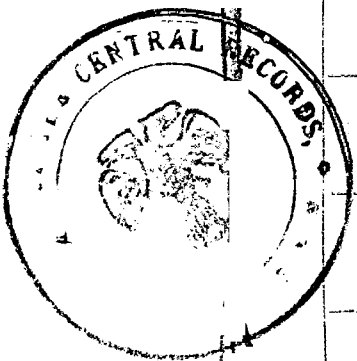
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assaulted when he went to seize ^{for} some camels near the Camp of a settlement officer and it was observed that the law imposed no duty on any Revenue official to seize animals belonging to private individuals for purposes of Camp transport ^{for} and therefore no offence was committed under section 305. That case is distinguishable from the present one under appeal. The case reported in A. S. D. 1928, Lahori 230 is more applicable to the present case than the cases quoted by appellants' advocate where the acts of the public servant were illegal or ultra vires ab-initio.

20. In the present case having regard to the tenor of Ex. P. 1 and P. 2, it

He



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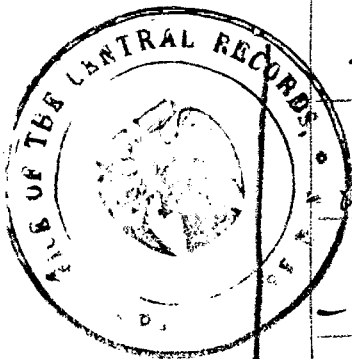
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Cannot be said that P. ne. 1 while
regulating admission into the
School was not acting in the
discharge of his duties as a public
servant and there is no force I
think in the argument that section
353 I.P.C. does not apply. It is
argued that even if it is held that
P. ne. 1 was pushed by the accused
the latter had no intention to prevent or deter
P. ne. 1 from discharging his duty as such
public servant. But even if this is assumed
to be true, the offence under section
353 will be complete if the assault
or criminal force is committed in conse-
quence of some thing done or attempted
to be done by the Public - - -
servant in the lawful discharge



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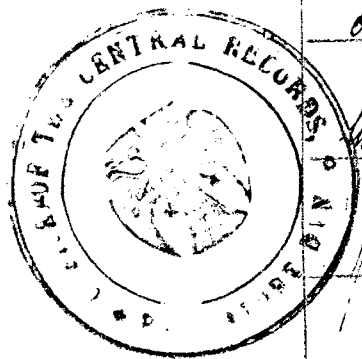
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35-

of his duty as such public servant
 in the present case it may have
 been the primary idea of the
 accused to get admission into
 the school. and remove any obstruction
 in his path rather than prevent
 or deter Pw1 in the discharge of
 his duty. But if it is once conceded
 that Pw1 was acting in the lawful
 discharge of his duties when he prevented
 the accused from getting in, and the accused
 pushed past Pw1, then the accused is
 doing so ^{was in} the consequence of something done
 or attempted to be done by Pw1 in
 the lawful discharge of his duty as such
 public servant. In this case of excluding
 entry to those not possessing the required
 ticket.



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21. Even assuming that a ticket had been left at appellant's house by whom that would not have changed the situation.

In order that only ticket-holders might be admitted it would have been necessary for persons wishing to enter the school to have had the ticket with them otherwise the very object of issuing the tickets only to certain specified persons would have been defeated. This becomes apparent also from the fact that sample tickets had been sent to the Police for



then being affixed to what sort of tickets the tickets were provided with. There would have been no necessity for this. If it was not intended that

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tickets should be shown to the
Police at the gate on the second
question for consideration I hold
that when the accused assaulted
or used criminal force to Pw,
the latter was acting in the execution
of his duty as such public servant
and that the accused committed
the act in consequence of something
done or attempted to be done
by Pw in the lawful discharge
of his duty as such public servant.

22. The last question to be considered
is as regards the extent and the ^{of} ~~severity~~
severity of the sentence. As already observed
the force given by the accused to Pw
was by no means a violent one
and the accused is guilty more



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or less of a technical offence
under section 2353 I.P.C. In the
portion of his judgment the
learned Magistrate observes as
follows "Taking into consideration
the age and the fact that
nothing is proved against the accused
I would proceed under section
562 I.P.C. code. But I cannot
forget the fact that I shall ^{be} ~~be~~
pronouncing judgment soon after
pronouncing judgment in this case
in a similar case pending against
him." Later on he observes -
"At the same time I would
not send him to jail as he
is the first offender". These observations

of the learned Magistrate above"



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that while for one purpose viz/
not awarding a sentence of
imprisonment— against him,
the accused was treated as a
first offender. Yet he was not
deemed to be such for the purpose
of giving him the benefit of
section 362 Criminal Procedure Code
this position it need hardly be
said is somewhat inconsistent. The
reason given by the Magistrate
for not proceeding against the
accused under section 362 Criminal
Procedure Code. namely that he
was going to commit him in a
similar case is not a sound one.
In the first place so far as the
case under appeal is concerned



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the accused was a first-offender
since judgment in the other case
had not been passed against
him. and the magistrate ought
not to have anticipated a
conviction in that case. So far
as ^{is} the other case is concerned
the accused may not be a first-
offender. since the judgment in
this case ^{precedes} ~~proceeds~~ and not succeed
the other one. the proper procedure
would have been to have
given the accused the benefit
of section 362 Criminal Procedure
Code in the case under appeal
if the magistrate thought that
the circumstances warranted
such a course and declined to



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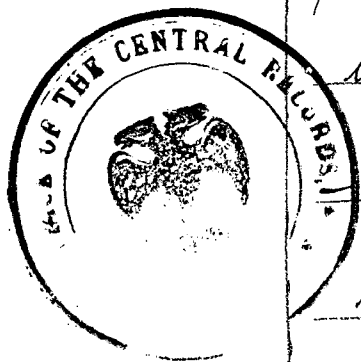
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treat him as a first offender
for the purposes of the other
case. I am obliged to dilate
somewhat on this ^{aspect of} ~~subject~~ because
the magistrate seems to have
thought that this was a fit case
for ^{for} ~~the~~ application of section
562 Criminal Procedure code the
only difficulty in his way apparently
being the fact that the accused
was going to be convicted in
another case, the maximum
punishment provided for an offence
under section 353 I.P.C. is imprison-
ment of either description for a
term of two years or with fine
or death. The offence is therefore falling
within the purview of section 562 (1A)



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criminal procedure code. which permits the accused being released after a mere admonition unlike as in cases of a more serious nature falling under ^{PM} sub clause (1) of the section where the accused has to enter into a bond with or without sureties.

23. At the same time the Magistrate has sentenced the accused to pay a fine of Rs 400/- or in default to undergo 3 months rigorous imprisonment. It may be provided out that in some cases a more fine may be made more onerous than imprisonment. It has been observed that it may generally be taken as a safe principle to follow that punishments should be made



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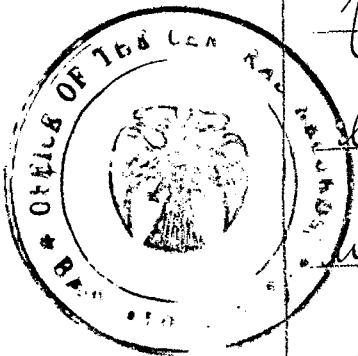
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as moderate as is consistent
with the object ^{aimed at} ~~attained~~ at
and that punishment in excess is
to defeat its own object
and to produce a re-action of
popular feeling no experience
shows (Per Beggess J.C. in *Nago Kun* 189
W. B. R. 330 & 333 — quoted at page
76 of Rattan — ^{Law 801} ~~Rattan's~~ ^{Law 801} ~~of~~ ^{of} ~~crimes~~ ^{crimes} 11th
edition) Section 63 I.P.C. lays down
the general principle that where
no sum is expressed to which a
fine may extend, the amount of
fine to which the offender is
liable is unlimited but shall not
be excessive. A Burma rule on
this subject lays down that fines
should be regulated on consideration



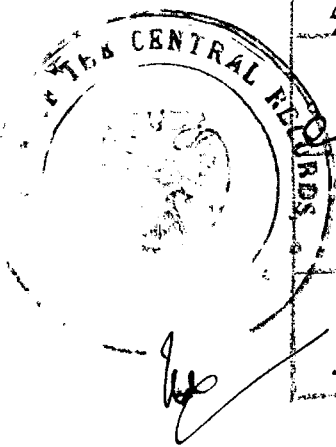
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of the means of the offender as
 well as the ^{gravity of} ~~quantity~~ of the offence
 and that excessive fines are
 prohibited by law and should
 be carefully avoided. A Central
 Provinces circular similarly emphasise
 as a first principle in inflicting
 the mode of punishment that
 it is necessary to have at much
 regard to the pecuniary circum-
 stances of the offence as to the
 character and magnitude of the
 offence. (Ratan Lal's Law of
 Crimes 11th Edition page 91.)

24. In the present case there are
 extenuating circumstances in favour of
 the accused. The rules regarding ad-
 mission into the school on the



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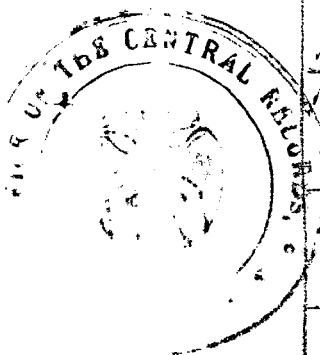
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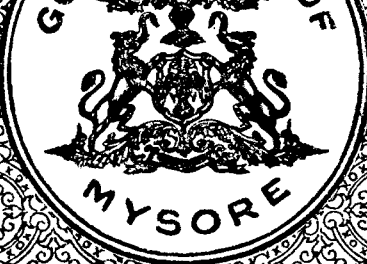
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particular manner. ^{well} ~~have~~ not-
strictly and impartially observed,
and the accused is only technically
guilty under section 353 I.P.C. I
more lenient punishment - than
what has been meted out - by
the lower court, with in my
opinion be sufficient to meet
the ends of justice. In the result
I confirm the conviction of
the appellant - for an offence
under section 353. I.P.C. but
reduce the fine to Rupees
twenty (20) and in default of
payment - of the fine the
accused shall undergo simple
imprisonment - for a period
of one week. The excess



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to me is already paid -
will be repaid to the
appellant -

Signed A. Greenivasaraghavachari

5-10-29 Sessions Judge

Pronounced in open court.

Signed A. Greenivasaraghavachari

Sessions Judge 8/10/29

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W. S. Srinivasiah

Head Record Officer



Talib Alzein
apf

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